

Senate Bill 156

By: Senators Tate of the 38th, Fort of the 39th, Henson of the 41st, Butler of the 55th, Zamarripa of the 36th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to create the Georgia Microbial Contamination Commission; to provide a
3 short title; to provide definitions; to provide for members, meetings, rules and regulations,
4 compensation, annual report, and budget unit; to provide for duties and powers of the
5 commission; to require licensure of persons engaged in the microbial profession; to provide
6 for the office of commissioner of the commission; to provide for a treasurer; to provide for
7 the disposition of fees collected under chapter; to provide for inspections by the
8 commissioner; to provide for injunctions; to provide for investigation of complaint; to
9 provide for other matters relative to the foregoing; to repeal conflicting laws; and for other
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
14 is amended by inserting immediately following Chapter 24 a new Chapter 24A to read as
15 follows:

16 "CHAPTER 24A

17 43-24A-1.

18 This chapter shall be known and may be cited as the 'Microbial Contamination Licensing
19 Act.'

20 43-24A-2.

21 As used in this chapter, the term:

22 (1) 'Commission' means the Georgia Microbial Contamination Commission established
23 by this chapter.

(2) 'Commissioner' means the Georgia Microbial Contamination commissioner established within the Georgia Microbial Contamination Commission pursuant to this chapter.

(3) 'Licensee' means any person licensed to engage in the practice of microbial testing, microbial contamination evaluation, or microbial remediation.

(4) 'Person' means an individual or a firm.

43-24A-3.

(a) There is created the Georgia Microbial Contamination Commission which shall be composed of seven members, each of whom shall be appointed by the Governor and confirmed by the Senate for a term of five years. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate. The seven members shall represent the following entities: the Institute of Inspection, Cleaning, and Restoration Certification, the American Industrial Hygiene Association, the American Conference of Governmental Industrial Hygienists, the Indoor Air Quality Association, the Environmental Protection Agency, the Centers for Disease Control and Prevention, and the Georgia Department of Consumer Affairs.

(b) Members of the commission shall serve until their successors are appointed and qualified. Vacancies on the commission shall be filled by appointment of a successor for the unexpired term of office by the Governor. Four members shall constitute a quorum for the transaction of any business of the commission. The commission shall organize by selecting from its members a chairperson and shall do all things necessary and convenient to carry this chapter into effect. The commission shall meet at least once a month, or as often as is necessary, and remain in session as long as the chairperson thereof shall deem it necessary to give full consideration to the business before the commission. Members of the commission or others may be designated by the chairperson of the commission, in a spirit of cooperation and coordination, to confer with similar commissions of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the commission in the advancement of the profession and the standards of the microbial industry.

(c) The Governor, after giving notice and an opportunity for a hearing, may remove from office any member of the commission for any of the following:

(1) Inability to perform or neglecting to perform the duties required of members;

(2) Incompetence; or

(3) Dishonest conduct.

(d) The commission is authorized to pass rules and regulations, not inconsistent with this chapter, relating to the professional conduct of licensees and the administration of this chapter.

(e) Each member of the commission shall be compensated as provided for in subsection (f) of Code Section 43-1-2.

(f) The commission, through its chairperson, shall file a written report with the Governor and a copy thereof with both houses of the General Assembly on or before the second Tuesday in January of each year. The Governor may request a preliminary report prior to such an annual report. The report shall include a summary of all actions taken by the commission, a financial report of income and disbursements, staff personnel, and number of persons licensed by the commission. The report shall further delineate steps taken in education and research to disseminate information so that all licensees can be better informed in order to protect the public. The commission shall also outline a program of education and research for each ensuing year, for which a line appropriation shall be requested.

(g) The commission shall not be under the jurisdiction of the Secretary of State but shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act'; provided, however, that the commission shall be assigned for administrative purposes only to the office of the Secretary of State.

43-24A-4.

(a) The commission shall be authorized and required to:

(1) Set educational requirements commensurate with levels of expertise for those persons actively engaged in the fields of microbial testing, microbial contamination evaluation, and microbial remediation;

(2) Set testing and continuing education requirements for those persons actively engaged in the fields of microbial testing, microbial contamination evaluation, and microbial remediation;

(3) Set requirements for the licensing and registration of those persons actively engaged in the fields of microbial testing, microbial contamination evaluation, and microbial remediation;

(4) Set reasonable fees for the education, testing, and licensing of those persons actively engaged in the fields of microbial testing, microbial contamination evaluation, and microbial remediation;

(5) Issue, renew, and reinstate licenses;

(6) Deny, suspend, revoke, or otherwise sanction licenses;

(7) Set reasonable fee structures for the testing, evaluation, and remediation of microbially contaminated property;

(8) Establish a state registry of all licensees and licensed firms meeting the educational, testing, and licensing criteria established by the commission for the benefit of public information;

(9) Set a standard for the collecting, sampling, and reporting of microbial contaminants and the subsequent protocols to address any findings;

(10) Establish a system for the reporting of microbially contaminated properties to the commission by licensees to provide prospective purchasers or renters with a property report that makes a variety of disclosures;

(11) Establish a disciplinary policy for those licensees who violate the provisions set by the commission;

(12) Adopt a seal and alter the same at the pleasure of the commission;

(13) Enter into contracts with other entities to assist in carrying out its duties; and

(14) Aid and assist the commissioner in the enforcement of this chapter in an advisory capacity as to matters pertaining to the enforcement of this chapter.

(b) The commissioner shall be guided by the recommendations of the commission in all matters relating to this chapter.

43-24A-5.

The commission shall be authorized to establish a bond recovery fund for the purpose of protecting the public against potential fraudulent or misleading actions on the part of licensees and to mitigate excessive insurance costs.

43-24A-6.

No person shall engage in the practice of microbial testing, microbial contamination evaluation, or microbial remediation in this state unless that person is licensed by the commission in accordance with this chapter.

43-24A-7.

(a) Any person desiring to engage in the practice of microbial testing, microbial contamination evaluation, or microbial remediation in this state shall file an application for a license with the commission. All original and subsequent applications filed with the commission shall be in such form and detail as the commission shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business and, if the applicant is a partnership or limited liability company, the

1 name and residence address of each member thereof and the name under which the
2 partnership or limited liability company business is to be conducted and, if the applicant
3 is a corporation, the name and address of each of its principal officers; and

4 (2) Such other information as the commission shall require.

5 (b) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the contrary,
6 all applications, including supporting documents and other personal information submitted
7 by applicants and licensees as part of an application filed with the commission, shall be
8 confidential. The commission shall deem as public records the following information and
9 shall make such information reasonably available for inspection by the general public: a
10 licensee's name, license number and status, business name, business address, business
11 telephone number, type of license held, and term of license; the fact that a licensee has or
12 has not received a disciplinary sanction; and such other information pertaining to the
13 license of a licensee or approval of a school, course, or instructor as the commission may
14 determine by rule.

15 43-24A-8.

16 (a) If the commission, after an application in proper form has been filed with it,
17 accompanied by the proper fee, shall refuse to issue a license to such applicant, the
18 commission shall provide an opportunity for a hearing for such applicant in accordance
19 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Unless otherwise
20 agreed by the commission, all such hearings shall be held in the county of the domicile of
21 the commission.

22 (b) Any person who has exhausted all administrative remedies available within this chapter
23 and who is aggrieved by a final decision in a contested case is entitled to judicial review
24 in accordance with Chapter 13 of Title 50. Notwithstanding any provision of subsection (b)
25 of Code Section 50-13-19 to the contrary, initial judicial review of a final decision of the
26 commission shall be available solely in the superior court of the county of domicile of the
27 commission.

28 43-24A-9.

29 (a) There is established within the commission the office of Georgia Microbial
30 Contamination commissioner.

31 (b) The commissioner shall be a full-time employee of the commission and shall serve as
32 the chief executive officer of the commission. The commission shall in its discretion
33 appoint the commissioner and fix his or her annual salary. Any person, in order to qualify
34 for appointment to the office of commissioner, shall be a person of good moral character
35 and shall possess such qualifications as the commission may require. The commissioner

1 shall hold no interest in any business engaged in the practice of microbial testing, microbial
2 contamination evaluation, or microbial remediation while serving as commissioner. The
3 commissioner, with the approval of the commission, may employ and fix the compensation
4 of a secretary, investigators, and other staff to assist him or her in his or her duties. Such
5 employees shall not be placed in the classified service of the state merit system, provided
6 that nothing in this chapter shall be construed to affect any employee in the classified
7 service of the state merit system as of July 1, 1981.

8 (c) The commissioner shall take an oath to discharge faithfully the duties of his or her
9 office.

10 (d) The commissioner shall be charged with the duties and powers as delegated by the
11 commission.

12 (e) The commissioner shall be allowed reimbursement for travel and other expenses
13 necessarily incurred in the performance of his or her duties, the same as other state officers
14 and employees, and shall receive payment of the same in the manner provided for members
15 of the commission.

16 43-24A-10.

17 The commissioner or his or her agents shall have during regular business hours the right
18 to see, examine, and inspect any and all records of any licensee pertaining to the operations
19 of the licensee within the provisions of this chapter.

20 43-24A-11.

21 The commissioner may institute a civil action to enjoin any violation of this chapter or any
22 rule or regulation promulgated under this chapter. A violation of this chapter or any rule
23 or regulation promulgated pursuant to this chapter is declared to constitute a public
24 nuisance, and such action for injunction may be maintained notwithstanding the existence
25 of other legal remedies and notwithstanding the pendency or successful completion of a
26 criminal prosecution.

27 43-24A-12.

28 The commission shall appoint an employee of the commission to serve as treasurer of the
29 commission. The treasurer shall receive and disburse all funds made available to the
30 commission by the General Assembly or otherwise in accordance with law and as may be
31 directed by the commission.

1 43-24A-13.

2 All fees collected pursuant to this chapter shall be deposited by the commission into the
3 state treasury. Out of the funds thus arising shall be paid the expenses contemplated in this
4 chapter for the administration and enforcement of this chapter. All expenditures authorized
5 by the commission shall be paid from the funds received pursuant to this chapter. The
6 expenses of the commission and the commissioner shall always be kept within the income
7 collected and deposited in accordance with this chapter; and the expense thereof shall not
8 be supported or paid from any other state fund.

9 43-24A-14.

10 (a) The commission may, upon its own motion, and shall, upon the sworn written request
11 of any person, investigate the actions of any applicant for licensure, licensee, or real estate
12 courses and instructors approved by the commission. Except for investigations of
13 applicants for licensure, the commission shall not initiate an investigation on its own
14 motion or investigate a licensee's activity as the result of a sworn written request for
15 investigation unless the act or acts which may constitute a violation of this chapter occurred
16 within three years of the initiation of the investigation.

17 (b) Any person authorized to conduct an investigation on behalf of the commission shall
18 have access to and may examine any writings, documents, or other material which may be
19 related to an investigation made upon the order of the commission.

20 (c) In the conduct of an authorized investigation, the commissioner or chairperson of the
21 commission may issue subpoenas to compel production of such writings, documents, or
22 material on behalf of the commission. After the service of a notice of hearing, the
23 commissioner or chairperson of the commission may issue subpoenas to compel production
24 of such writings, documents, or material, either on behalf of the commission or at the
25 request of a respondent. The commission or the respondent may apply to the superior court
26 of the county in which a person disobeying a subpoena resides for an order requiring
27 compliance. Failure to comply with such an order shall be punishable as for contempt of
28 court.

29 (d) The results of all investigations shall be reported only to the commission or to the
30 commissioner, and the records of such investigations shall not be subject to subpoena in
31 civil actions. Records of investigations shall be kept by the commission and no part of any
32 investigative record shall be released for any purpose other than a hearing before the
33 commission or its designated hearing officer, review by another law enforcement agency
34 or lawful licensing authority upon issuance of a subpoena from such agency or authority
35 or at the discretion of the commission upon an affirmative vote of all members of the
36 commission, review by the respondent after the service of a notice of hearing, review by

1 the commission's legal counsel, or an appeal of a decision by the commission to a court of
2 competent jurisdiction. After service of a notice of hearing, a respondent shall have a right
3 to obtain a copy of the investigative record pertaining to the respondent.

4 (e) The commission shall have the authority to exclude all persons during the
5 commission's or the staff of the commission's:

6 (1) Deliberations on disciplinary proceedings;

7 (2) Meetings with a licensee or an applicant or the legal counsel of that licensee or
8 applicant in which the licensee or applicant seeks to settle a contested case as provided
9 in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act'; and

10 (3) Review of the results of investigations initiated under this Code section."

11 **SECTION 2.**

12 All laws and parts of laws in conflict with this Act are repealed.